



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

July 3, 1991

Ms. Leah A. Curtis  
Assistant Criminal District Attorney  
Civil Section  
300 Dolorosa, Suite 4049  
San Antonio, Texas 78205-3030

OR91-317

Dear Ms. Curtis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12706.

The Bexar County Sheriff received an open records request for the following:

Any and all reports submitted to and from [the Internal Affairs Office, the Chief Inspector's office, the field folder and Personnel] regarding any investigation on Officers Belle and James Jensen.

Any and all personnel records of a detrimental nature that have been proposed or served against Officers Belle and James Jensen.

Any and all supervisors' reports or reports from internal affairs investigations regarding Officers Belle and James Jensen, to include the written results of both polygraph examinations given to Officer Belle Jensen.

You state that you will release to the requestor copies of the Jensens' personnel files. You seek to withhold the reports pertaining to the internal affairs investigation into Officer Belle Jensen's sexual harassment complaint pursuant to section 3(a)(1) of the Open Records Act, which protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You contend that all statements made by the detention officers under the protection of

*Garrity* warnings should be withheld pursuant to section 3(a)(1) of the Open Records Act as information deemed confidential under the United States Constitution or by judicial decision, and that all other information contained in the internal affairs investigation file is so inextricably intertwined with protected information that the entire file may be withheld.

In *Garrity v. New Jersey*, 385 U.S. 493 (1967), the Supreme Court held that the Fourteenth Amendment prohibits the use of law enforcement officials' statements in subsequent criminal proceedings against them when those statements were obtained under threat of removal from office. The Court's holding in *Garrity* that such statements are inadmissible in subsequent proceedings has no bearing, however, on whether those privileged statements are confidential under the Open Records Act. Cf. Open Records Decision No. 575 (1990) (section 3(a)(1) confidentiality does not encompass discovery privileges). Further, these statements cannot be made confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Consequently, unless the requested information falls within one of the Act's exceptions to disclosure, it must be released, notwithstanding any agreement between the sheriff's office and its officers specifying otherwise. In sum, the *Garrity* warnings afforded to some of the officers in the internal investigation provide no basis for exempting any of the reports in the internal investigation file from disclosure.

Your request does not assert any other basis for withholding the information. The material you submitted to this office, however, suggests two other possible bases for withholding the information under section 3(a)(1): (i) by judicial decision, *see Industrial Foundation, supra*, at 683-85 (holding that section 3(a)(1) applies to the public disclosure of private facts), and (ii) by statute, specifically the Polygraph Examiners Act, article 4413(29cc), V.T.C.S. (providing for the confidentiality of the results of polygraph examinations).

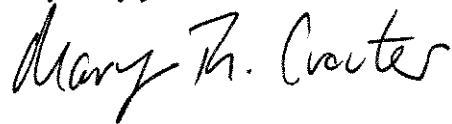
With respect to the first basis, the information in the internal investigation file does not contain the kind of highly intimate or embarrassing facts about a person's private affairs which are normally protected from disclosure under section 3(a)(1). *See Industrial Foundation, supra*, at 683-85. Moreover, the information relates to a subject of legitimate public interest, *i.e.*, the working environment and on-the-job conduct of public employees, and, therefore, even if it did implicate privacy interests, it would not be exempt from disclosure. *See id.*; *see also* Open

Records Decision No. 579 (1990) (an investigative file concerning a sexual harassment complaint is not exempted from disclosure under section 3(a)(1) as a public disclosure of private facts).

With respect to the second basis for withholding material under section 3(a)(1) of the Open Records Act, section 19A(d) of the Polygraph Examiners Act provides that information acquired from a polygraph examination may not be disclosed except to certain individuals and entities, including but not limited to the examinee, his or her designee,<sup>1</sup> and the entity requesting the examination. Because the requestor is not an individual to whom information acquired from a polygraph examination may be released under section 19A(d) of the Polygraph Examiners Act, the polygraph examination results are exempt from disclosure under section 3(a)(1) of the Open Records Act and should not be released. *See* Open Records Decision No. 562 (1990) (polygraph examiner's report withheld under section 3(a)(1) of the Open Records Act in conjunction with section 19A(d) of the Polygraph Examiners Act). Accordingly, the polygraph examination report and the portion of the May 24, 1991 summary setting forth results of the polygraph examination may not be released.

With the exception of the polygraph examination materials, the requested information must be released. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-317.

Very truly yours,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/mc

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<sup>1</sup>Section 19A(c)(1) of the Polygraph Examiners Act provides that the designee must be "specifically designated in writing by the examinee".

Ref.: ID# 12706

Enclosures: Open Records Decision Nos. 579, 562

cc: Ms. Linda Chavez-Thompson  
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